

**THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

ERICK GACHUHI WANJIKU,)
Petitioner,)
v.) CIV-23-464-R
DEPARTMENT OF HOMELAND)
SECURITY, *et al.*,)
Respondents.)

ORDER

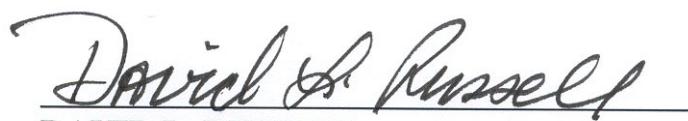
Petitioner Erick Gachuhi Wanjiku filed this action, *pro se*, seeking a Writ of Mandamus to remove a March 17, 2023 detainer issued by U.S. Immigration and Customs Enforcement to the Lawton Community Corrections Center where he was incarcerated. Pursuant to 28 U.S.C. § 636(b)(1)(B), the matter was referred to United States Magistrate Judge Gary M. Purcell for review. After directing the parties to provide further briefing, Judge Purcell issued a Report and Recommendation recommending that the Court dismiss this action for lack of subject matter jurisdiction. Judge Purcell concluded there is no live controversy and Petitioner's request is moot because the March 17, 2023 detainer has been lifted. Petitioner filed a timely response [Doc. Nos. 16, 17] and the Court must therefore make a de novo determination of the portions of the Report to which a specific objection is made. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

Petitioner's response complains that he has not been served with the detainer, the detainer lacks a bond amount and number, and the warrant accompanying the detainer has not been lifted. He does not, however, specifically dispute that the detainer has been lifted.

Further, Respondent's response brief and accompanying exhibit establish that the March 17, 2023 detainer has been lifted. Accordingly, upon de novo review, the Court agrees with Judge Purcell's analysis and conclusion that this action does not present a live case or controversy and Petitioner's Petition for Writ of Mandamus seeking to remove the March 17, 2023 detainer is moot. To the extent Petitioner raises new legal claims or arguments in his objection or seeks to challenge a different detainer, those issues are not properly before the Court in this action. *See Marshall v. Chater*, 75 F.3d 1421, 1426 (10th Cir. 1996) (“Issues raised for the first time in objections to the magistrate judge's recommendation are deemed waived.”); *Scott v. Hormel*, No. CIV-18-395-SLP, 2019 WL 3935101, at *2 n.2 (W.D. Okla. Aug. 20, 2019) (“To the extent Plaintiff includes new factual allegations in his Objection, the new allegations are not determinative of whether Plaintiff adequately stated claims in his Complaint.”).

The Court therefore ADOPTS the Report and Recommendation [Doc. No. 15] and dismisses this action for lack of subject matter jurisdiction.

IT IS SO ORDERED this 18th day of August 2023.



DAVID L. RUSSELL
UNITED STATES DISTRICT JUDGE